

# Title V/Clean Air Act: U.S. Environmental Protection Agency Addresses Petitions Objecting to Allegany County, New York Landfill



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The Administrator of the United States Environmental Protection Agency (“EPA”) issued an Order responding to two Petitions requesting objection to the issuance of a Title V operating permit (“Permit”) for the Hyland Facility Associates Landfill in Allegany County, New York.

The separate Petitions were denominated by EPA as:

- Scott Petition
- CCAC Petition

The Petitions request that the EPA Administrator object to the proposed Permit issued by the New York State Department of Environmental Conservation (“DEC”).

The federal Clean Air Act Title V program includes a provision that allows the EPA Administrator to object to a Title V permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role by mandating that every Title V permit be subject to a 45-day EPA review period before the Title V permit is finalized.

The EPA Administrator can object to a Title V permit at two points.

An objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if the EPA fails to object to a proposed Title V permit, a right to petition the agency to reconsider its failure to object to the permit is potentially available. However, only those who have submitted comments on the draft permit during the applicable public comment period have a right to petition.

The right to petition EPA arises at the close of the agency’s 45-day review period.

The Hyland Facility Associates Landfill is described as a municipal solid waste landfill. It is stated to accept waste from various sources including cuttings and other wastes associated with natural gas drillings from the Marcellus Shale region in Pennsylvania. The company is stated to be seeking to increase the annual waste disposal limits at the landfill from 312,000 tons per year to 465,000 tons per year.

The Scott Petition expresses concerns related to the landfill’s acceptance of drill cuttings and other drilling wastes from natural gas drilling operations. The possibility that the deposition of these wastes will result in air emissions of radon from the landfill is raised.

The inability of either EPA or DEC to require landfills to either monitor or control radon emissions is asserted.

EPA denies the Scott objection. It notes that Title V permits “do not generally add new substantive requirements, but rather serve as a vehicle for compiling all existing requirements that apply to a source.” It concludes that the Petitioner did not successfully contend that the Permit fails to contain or comply with the relevant requirements of the Clean Air Act or the applicable implementation plan. It points to the absence of specific standards related to the control of monitoring of radon emissions from landfills.

EPA also denies the CCAC Petition.

The agency rejects the argument that the Permit contains “a material mistake or that inaccurate statements were made in establishing the emission standards or other terms or conditions of the Permit.” CCAC had alleged that the landfill accepted certain types of wastes that DEC has stated are not allowed for disposal and which contain elevated levels of radioactivity. This was deemed by CCAC to be a material mistake.

The various concerns expressed by CCAC are referenced but the agency concludes that such concerns are not relevant to the current Title V permit action. It is stated to have failed to identify any applicable Clean Air Act requirements that are not included in the Permit or which the Permit does not comply or assure compliance.

A copy of the Order can be downloaded [here](#).